IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 610 of 2001

to

FIRST APPEALNo 616 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MULJIBHAI NANUBHAI

Appearance:
Mr.Umesh Trivedi, learned A.G.P. for the appellants
MR NITIN M AMIN for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 13/02/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Admit. Issue notice. Mr. Nitin Amin waives service on behalf of respondents - claimants in all these Appeals. On the request of both the sides all these Appeals are taken up for final hearing right today. Whereas all these Appeals are directed against the common judgment and order passed in Land Acquisition Reference Cases Nos.2592 to 2598 of 1996, the main case being Land Acquisition Reference Case No.2594/96 decided by the 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), Mirzapur, Ahmedabad on 28.12.99 we propose to decide all these 7 First Appeals by this common judgment and order as under:-

The lands of the respondents - claimants of village Rojid,Taluka Dhandhuka, District Ahmedabad were sought to be acquired for the construction of Narmada Project Limdi Branch Canal, the description of the lands and the area has been tabled in Para 2 of the impugned judgment. For this purpose, Notification under Sec.4 was published in the Government Gazette on 11.2.93 and the Notification under Sec.6 was published on 14.10.93. The Special Land Acquisition Officer fixed the market price of the land at the rate of Rs.1.20 Ps. per sq.mt. for the purpose of payment of compensation to the land owners and passed the Award on 27.10.95 accordingly. The claimants, dissatisfied with the award, took the matter for reference under Sec.18 of the Land Acquisition Act claiming compensation at the rate of Rs.30/-- per sq.mt. instead of Rs.1.20 Ps. per sq.mt. as was granted by the Special Land Acquisition Officer. The Reference Court has decided all these Land Acquisition Reference Cases by the impugned judgment and order dated 28.12.99 and has determined the rate of compensation at Rs.28/-- per sq.mt. instead of Rs.1.20 Ps. per sq.mt. alongwith other allied reliefs. The learned A.G.P. appearing on behalf of the appellants has submitted that the Award has been passed on the basis of previous Awards, which had been passed with regard to villages Ranpur, Khas, Dharpipla, Saranpur, Barwala, Kinara and Patana. The lands of these villages have been acquired for different purposes and in those cases the Court had awarded the compensation at the rates of Rs.12.50 Ps., Rs.13/-- and Rs.17/-- per sq.mt. whereas the Notifications under Sec.4 in those cases had been published in the years 1982, 1984, 1986 and 1988. The Reference Court has dealt with the previous awards and the rate has been fixed for the purpose of those lands in paras 20 and 21 of the

impugned award in detail. There is no dispute that the lands of village Rojid are adjoining to the villages in respect of which the previous awards have been passed, which had been relied upon by the Reference Court while passing the Award. However Mr.Trivedi, learned A.G.P. citing (1998) 8 SCC 136 (Kanwar Singh v. Union of India) has submitted that merely because the Villages were adjoining, the previous awards could not be relied upon because the lands of adjoining villages are not necessarily comparable, merely because the lands under acquisition are situated in yet another adjoining village. So far as Kanwar Singh's case (Supra) is concerned, the matter has been decided on its own facts. May be that in a given case, the lands acquired of a particular village adjoining to other villages are not be of the same quality and may not be comparable, but so far as the facts of the present case are concerned, a reading of the impugned judgment, particularly Paras 20 and 21, would make it clear that the lands under acquisition are clearly comparable with the villages in respect of which the previous awards were passed and which have been relied upon. We have no reason to take a view different than the one taken by the Reference Court on this aspect of the matter and, therefore, this contention, as raised by the learned A.G.P., fails.

In the present case the Notification under Sec.4 was issued in the year 1993 and, therefore, the rate of Rs.28/-- per sq.mt., as has been fixed by the Reference Court, is just and adequate.

It was then argued by Mr. Trivedi and rightly so that the Reference Court has in Para 24 of the impugned Judgment directed not to deduct 5% share of the Government from the compensation. The submission of Mr. Trivedi is that this is contrary to the Gujarat State Amendment in the Land Acquisition Act by way of Sec.11A and, therefore, this deduction should have been allowed in favour of the appellants. Mr. Nitin Amin appearing on behalf of the respondents - claimants has submitted that the respondents - claimants do not contest if the Award is modified to that extent and, therefore, we order that the cases in which the land is new tenure, 5% Government share shall be deducted from the compensation awarded. The impugned Award in each of these maters stands modified accordingly and the rights of the parties shall be governed in the light of the modification, as ordered by this court hereinabove and the decree be drawn accordingly.

All these 7 First Appeals are partly allowed to

the limited extent as above with no order as to costs. It is expected that the due amount of compensation with the modification as above shall be paid to the respondents - claimants within a period of three months from the date the certified copy of this order is served by either of the parties upon the concerned authority.

(M.R.Calla,J)

(J.R.Vora,J)